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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/008,640      | 11/08/2001  | Robert McNeil        | OHH-P-23            | 3204             |

7590 11/14/2002

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EXAMINER

OLSZEWSKI, JOAN M

|          |              |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
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3643

DATE MAILED: 11/14/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/008,640

Applicant(s)

MCNEIL, ROBERT

Examiner

Joan M. Olszewski

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10/16/2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

PETER M. POON  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 16 October 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

### **FINAL REJECTION**

This is in response to Applicant's amendment and response to office action filed October 16, 2002. Currently claims 1-9 are pending in this application.

With respect to the drawing corrections these are considered acceptable by the Examiner and acknowledgment is made of a certified copy of application 2,325,291 being filed 10/24/2002.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1- 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rainey, Jr. (U.S. Patent 5,259,809) in view of Holt (U.S. Patent 5,177,891).

Regarding Claims 1 and 4, Rainey, Jr. discloses a method (Abstract) and apparatus (14) for attracting marine crustaceans (6) to a desired location, as well as teaching that it is well known in the art to use combinations of light, scent, and sound to attract animals to traps (column 1, lines 24-25). Rainey, Jr. does not show the use of a sound emitting attractor formed of a waterproof container having an exterior surface housing, a power supply and storage means containing a recording of the background sound of a preferred habitat of the marine crustacean or a sound transmission means for transmitting the recorded sound from the desired location and the sound transmission means also being located in the container. However, Holt discloses a

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sound emitting attractor having a waterproof container (200) having an external surface (Figure 2), having a power supply (203), storage means (204) capable of containing a recording of background sounds that are known to attract fish (column 6, lines 1-20) such as the sound of bait, and a speaker (224,225) for transmitting the sound. Further, it would be obvious to select a desired background sound based on the likes of the animal trying to be attracted.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the device of Rainey, Jr. by using a sound transmitting device as taught by Holt, as detailed above, since in doing so one is merely replacing one known type of attractant for another which is recognized by Rainey, Jr. in column 1, lines 24-25. Further, the sound of bait is a normal background sound found in the habitat of all animals and as such is considered to constitute background sound.

Re- Claims 2 and 5, Rainey, Jr. as modified by Holt, discloses all the claimed features including a method (Abstract) and apparatus (14)(Rainey, Jr.) for attracting a marine crustacean. Rainey Jr. does not specify the marine crustacean as a lobster. However, examiner maintains that the class Crustacea includes both lobster and shrimp and therefore to modify a trap to catch one or the other would be dependent only on the location and sound generated.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have recognized that the trap of Rainey, Jr. as modified by Holt, could have been easily used to trap lobsters as well as shrimp.

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Re-Claims 3 and 6, Rainey, Jr. as modified by Holt, discloses all the claimed features including a method (Abstract) and apparatus (14)(Rainey, Jr.) being located in a lobster trap since the structure is used to confine Crustacea.

***Claim Rejections - 35 USC § 103***

Claims 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rainey, Jr. as modified by Holt as applied to claims 1-6 above, and further in view of Rodgers (U.S. Patent 5,697,182).

Re- Claims 7 and 9, the combination of Rainey, Jr. and Holt as discussed in the rejections above discloses all the claimed features except for the an external switching means comprising electrical contact points that are wired to the power supply to form a partial electrical circuit and wherein submersion in water completes the electrical circuit and activates sound transmission. However, Rodgers teaches the use of an external switch (20), having electrical contact points (11,13) connected to a battery (26) thus forming a partial electrical circuit when placed in water (column 6, lines 23-25).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the combination of Rainey, Jr. and Holt device by utilizing an external switch with electrical contact points connected to a battery which when placed in water forms a partial electrical circuit as taught by Rodgers in order to provide easy activation of the switch.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rainey, Jr. as modified by Holt as applied to claims 1-6 above, and further in view of DuMont (U.S. Patent 5,331,760).

Re- Claims 7 and 8, the combination of Rainey Jr. and Holt as discussed in the rejections above discloses all the claimed features except for a manual external switching means for activating and deactivating an attractant device prior to, during placement, and after removal from the desired location. However, DuMont teaches the use of a manual, externally located switch (24) for controlling a device.

Therefore, it would have been obvious to one of ordinary skill in the art to have modified the combination of Rainey, Jr. and Holt device to include a manual external switch to control the operation of the device in order to provide an easily accessible mechanical means to activate and deactivate the sound system so as to conserve energy when not needed and to prolong the life of the battery.

### ***Response to Arguments***

Applicant's arguments filed October 16, 2002 have been fully considered but they are not persuasive.

Applicant argues that the combination of Rainey, Jr. and Holt is improper because the prior art does not suggest a motivation to combine the teachings of the two patents. Further, the Holt reference is directed to producing sounds that would attract game fish not crustaceans. Further, Applicant argues that Holt does not teach or suggest the use of a sound that simulates an animal's preferred habitat. However, with

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respect to claims 1-3 and 7-9 these are all directed to an apparatus "for" attracting marine crustaceans and as such the feature of attracting marine life is an intended use which does not limit the structure. Further, the Rainey, Jr. reference was relied on only to teach the basic concept of a crustacean trap using an artificial component to attract crustaceans. The Holt device was relied upon to teach that it is known in the art to generate sounds in order to attract aquatic life. Further, in Holt column 6, lines 11-13 the benefit of using different sounds of different bait is recognized therefore, in modifying Rainey, Jr. by the teachings of Holt one skilled in the art would recognize that the type of sound emitted would have to attract the desired species of marine life. As such, when combining these two references in order to maintain the functionality of Rainey, Jr. the sound emitter would have to generate a sound that attracts crustaceans such as lobsters. As discussed above this combination is considered to meet the limitation set forth in both the apparatus and method claims. With respect to "background sound" being generated the marine life which would attract the lobster and the sounds made there by would be background sound in the lobster's habitat.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joan M. Olszewski whose telephone number is 703-305-2693. The examiner can normally be reached on Monday-Friday (5:30-3:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703-308-2574. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

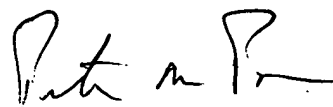


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Joan M. Olszewski  
Examiner  
Art Unit 3643

JMO  
November 8, 2002

A handwritten signature in black ink, appearing to read "Peter M. Poon". The signature is stylized with a large initial "P" and a long horizontal stroke at the end.

PETER M. POON  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600